

ZONING BOARD OF ADJUSTMENT

MINUTES

OCTOBER 21, 2020

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 21, 2020 at the Conway Village Fire Station, 97 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Alternate, Jonathan Hebert; and Alternate, Jac Cuddy were in the audience.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **PAUL AND SHARON PACENKA** in regards to §190-15.B.(4)(a) of the Conway Zoning Ordinance **to allow an additional residential unit for a total of three-units** at 29 Pollard Street, Conway (PID 276-5). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020. This hearing was continued from September 16, 2020.

Paul and Sharon Pacenka appeared before the Board. Mr. Pierce stepped down. Mr. Colbath appointed Ms. Sherman as a voting member. Ms. Pacenka read the attached statement.

Ms. Pacenka stated that they are still waiting for the scaled drawing of the parking and would like to request a continuance.

Mr. Steiner made a motion, seconded by Ms. Sherman, to continue the hearing for Paul and Sharen Pacenka until November 18, 2020 at 7:00 pm. Motion carried unanimously.

A public hearing was opened at 7:11 pm to consider a **VARIANCE** requested by **JOSEPH AND BEVERLY FERNALD** in regards to §190-28.B.(1) of the Conway Zoning Ordinance **to allow the construction of a 12’x14’ screened porch within the Wetland and Watershed Protection Overlay District structure setback** at 237 Robinwood Road, Center Conway (PID 253-95). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, October 9, 2020.

Joseph and Beverly Fernald appeared before the Board. Mr. Pierce rejoined the Board at this time [Ms. Sherman is no longer a voting member]. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Fernald stated they just want to enjoy the outside and the view of the Saco River without getting attacked by the black flies and mosquitoes. Mr. Fernald stated it would be attached to the deck, not the house.

Adopted: November 18, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 21, 2020

Mr. Colbath asked for Board comment; Mr. Pierce asked where the 75-foot setback is located. Mr. Fernald stated he isn't sure where it is located exactly. Mr. Chalmers asked how much is encroaching into the setback. Mr. Irving stated his assumption is that about half of the house is within the setback; the deck they wish to add to is already within the setback. Mr. Irving stated it would add more area in the encroachment, not deeper into the encroachment.

Mr. Fernald stated there would be no foundation. Mr. Bartolomeo asked if they considered screening part of the deck that is existing. Mr. Fernald stated it would block our windows looking at the Saco River. Mr. Colbath suggested a removable screen house.

Mr. Bartolomeo stated if they elect to construct on top of existing deck there would still be a volumetric expansion. Mr. Irving stated there is a provision to allow a three-dimensional expansion. Mr. Bartolomeo stated that is another option; variances are a last-ditch way to solve a problem.

Mr. Chalmers stated he would like to have more information on where that setback is. Mr. Pierce stated we can presume it is in the setback, and a survey is going to cost money; there are other options. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Steiner and Mr. Pierce voting in the negative.**

Mr. Colbath read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Colbath stated the spirit of the ordinance is to protect the wetland. **Motion defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Colbath stated justice lays with the Town ordinance. **Motion defeated unanimously.**

Mr. Colbath read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated there are alternate options for a conforming porch. **Motion defeated unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Steiner voting in the negative.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that based on i. and ii. above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the property can still be used as they want. **Motion defeated unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Mr. Colbath asked for Board comment; there was none. **Motion defeated unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-28.B.(1) of the Town of Conway Zoning Ordinance to allow the construction of a 12’x14’ screened porch within the Wetland and Watershed Protection Overlay District structure setback be granted. Motion defeated unanimously.

A public hearing was opened at 7:34 pm to consider a **SPECIAL EXCEPTION** requested by **CADORETTE FAMILY REVOCABLE TRUST/JAY AND ELIZABETH CADORETTE** in regards to §190-18.B.(5)(a) of the Conway Zoning Ordinance **to allow an additional residential unit for a total of three-units the construction of a 12’x14’ screened porch within the Wetland and Watershed Protection Overlay District structure setback** at 47 West Main Street, Conway (PID 253-95). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, October 9, 2020.

Jay Cadorette appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Cadorette stated the structure was built in 1850; there will be three units; the property has 2.28 acres; there will be no changes to the exterior; there is ample parking on site; the unit will be 1,000 square feet; and it will not be used for VRBO or Airbnb. Mr. Cadorette stated it is hooked to municipal water and sewer, and the existing two units are used for long-term rentals.

Mr. Colbath asked for Board comment; Ms. Sherman asked if a scaled site drawing was submitted. Mr. Irving referred to an archived Planning Board file under A. Elizabeth Priebe [File #FR03-09] that had a surveyed plan of the property.

Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that substantially all of the structure was constructed prior to 1930.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the total number of dwelling units on the site does not exceed four (4).** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that no less than 5,000 square feet of land area must be provided on the parcel for each unit that exists or is to be constructed thereon.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that no significant changes to the exterior lines or architectural detail are made which would diminish the historical or architectural heritage of the structure.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that adequate area is available for parking outside the setback and buffer areas.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 6 is not applicable to this application. Motion Accessory structures must have at least three hundred (300) square feet of occupiable space per unit suitable for conversion to a dwelling unit.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that all of the dwelling units shall be used for long-term residency; short-term transient occupancies of less than 30 consecutive days of any dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that scaled floor plans and a scaled site drawing must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the requirements for this special exception.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-18.B.(5)(a) of the Town of Conway Zoning Ordinance to allow an additional residential unit for total of three-units be granted. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

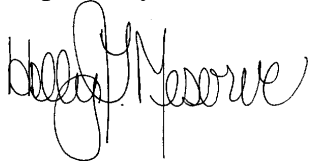
Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of September 16, 2020 as written. Motion carried unanimously.

2021 ZBA DATES AND SUBMITTAL DEADLINES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the 2021 ZBA Dates and Submittal Deadlines as presented. Motion carried unanimously.

Meeting adjourned at 8:00 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large, looped initial "H".

Holly L. Meserve
Planning Assistant